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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,707	07/03/2003	Megan Tobin	63365.010100	5049
32361 7590 04/14/2008 GREENBERG TRAUIG, LLP MET LIFE BUILDING 200 PARK AVENUE NEW YORK, NY 10166				
EXAMINER WILLIAMS, JAMELA O				
ART UNIT		PAPER NUMBER		
3722				
NOTIFICATION DATE		DELIVERY MODE		
04/14/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/613,707

**Applicant(s)**

TOBIN, MEGAN

**Examiner**

JAMILA WILLIAMS

**Art Unit**

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6, 7, 9 and 11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4, 6-7, 9, 11 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,3,4,6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by 5,897,421 to Rink et al (hereinafter Rink). Rink discloses a plurality of removably attachable segments (figs 1-2), each segment having at least one attachment means (figs 9-11), whereby the segments are removably attached one to the other by the at least one attachment means and where attached the segments form the stand alone animal-shaped toy (the examiner takes the position that these articles are animal shaped, i.e. snake or serpentine. See also column 2 lines 55-56 of the specification) and item of wearing apparel; the article is dimensioned to be worn by a wearer (inherently capable of being worn); the plurality of removably attachable segments are adapted to variably configure the article so as to form a plurality of animal shapes (in that each member has hook and loop material for removable attachment, the segments are inherently capable of being variably configured as claimed- figures 2 and 4 can be considered a plurality of animal shapes), as recited in claim 1.

Rink further discloses the removably attachable segments comprise a base (38) and cover segment (4), as recited in claim 3; wherein the removably attachable segments comprise at least one appendage segment (8,14), as recited in claim 4.

Rink further discloses the segments are adapted to variably configure the article so as to alter the size (figs 2 and 4); wherein the article is worn over a neck, waist or shoulder portion of a wearer (inherently capable of being worn), as recited in claim 6; wherein the article consist of essentially soft material (cotton fabric), as recited in claim 9.

3. Claims 1,2 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by 6,623,328 to Theel. Theel discloses a plurality of removably attachable segments (fig 2) having at least one attachment means (145), where attached the segments form the stand along animal shaped toy (worm, fig 2) and item of wearing apparel (in that structure is met by Theel, it is inherently capable of being worn), the segments are adapted to variably configure the article so as to form a plurality of animal shapes (in that the segments all have hook and loop material for removable attachment, the segments are inherently capable of being variably configured as claimed), as recited in claim 1, wherein the segments comprise at least one head (160) and body (170) segment, as recited in claim 2; wherein the article further comprises at least one external opening (the opening where the rope 210 initially enters the articles) leading to an internal cavity (the cavity within the articles where the rope 210 passes through the articles , see also figure 2 and column 2 lines 29-38) configured to contain at least one belonging (210), as recited in claim 11. Inasmuch as the articles of Theel meet all of the structural limitations of the claims, it is presumed to be inherently capable of the claimed functions.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rink et al. Rink discloses all of the elements of the claims but for the color. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to change the color of the articles as a matter of design choice and for the purpose of proving a more appealing article for the user.

***Response to Arguments***

Applicant's arguments filed 1-3-2008 have been fully considered but they are not persuasive.

The objections to the drawings and the 112 rejections from the previous action have been overcome by this amendment.

Regarding applicant's argument that Rink et al does not disclose "the plurality of removably attachable segments are adapted to variably configure the article so as to form a plurality of animal shapes", the examiner respectfully disagrees. In that the segments of Rink et al all have hook and loop material for the removable connection of the segments, they are inherently capable of being variably configured as claimed. Regarding applicant's argument that Theel does not disclose "whereby the segments are removably attached one to the other by the at least one attachment means and

where attached the segments form the stand-alone animal-shaped toy and item of wearing apparel....the article dimensioned to be worn by a user", the examiner respectively disagrees. The segments of Theel are removably connected with hook and loop material and the segments where attached form a stand-alone animal-shaped toy. Regarding the article being dimensioned to be worn by a user, there is nothing that prevents the device of Theel from being worn by a user (child or adult). Looking at figure 4 for example, the limbs of the article can be placed on the shoulder of a user. Theel meets the structural elements of the claims therefore it is presumed to be inherently capable of the claimed functions.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMILA WILLIAMS whose telephone number is (571)272-4431. The examiner can normally be reached on Monday-Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W./  
Examiner, Art Unit 3722

/Monica S. Carter/  
Supervisory Patent Examiner, Art Unit 3722